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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 9

LUTHER H. REICHELDERFER, HERBERT B. CROSBY AND JOHN C. GOTWALLS, COMMISSIONERS OF THE DISTRICT OF COLUMBIA,

Petitioners,

vs.

HENRY I. QUINN, GEORGE J. MUELLER, JR., HENRY ORTH, JR., et al.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR RESPONDENTS IN OPPOSITION

JOSEPH A. BURKART,
HENRY I. QUINN,
GEORGE E. SULLIVAN,
Attorneys for Respondents.

PRESS OF THE SUDWARTH CO., WASHINGTON

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OCTOBER TERM, 1931.

No. 729

LUTHER H. REICHELDERFER, HERBERT B. CROSBY AND JOHN C. GOTWALLS, COMMISSIONERS OF THE DISTRICT OF COLUMBIA,

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW.

Two opinions were rendered by the Court of Appeals. The first is reported in 48 App. D. C.

339, and the second in 60 W. L. R. 38. The final judgment of the Court of Appeals was entered December 7, 1931 (Rec. 17).

QUESTIONS PRESENTED.

The questions presented are clearly set forth, and dealt with, in the first opinion of the Court of Appeals (58 App. D. C. 339), making manifest that there is no semblance of interference with the police power such as is contended by petitioners. Respondents' homes are located near the corner of 16th Street and Colorado Avenue, Washington, D. C., in the first and highest grade or class of residentially zoned properties, known as "'A' Restricted-Area District" (in which fire engine houses, places of incarceration, incinerators, and other inharmonious establishments are in no manner provided for), the permissible residential uses being expressly stated in Section XVa of D. C. Zoning Regulations as follows:

> "for use only as a wholly detached single-family dwelling with two side yards, church, school, or passenger station" (Rec. 3)."

Fire engine houses are not prohibited in first commercial, second commercial, or industrial zoned areas (Rec. 3).

Respondents' said homes are also adjacent to that corner of Rock Creek Park which forms the Northwest corner of said intersection (less than

100 feet from the home of one of the respondents, less than 200 feet from the home of another respondent, and but slightly further distant from the other respondents). It is at said corner of Rock Creek Park that the Commissioners of the District of Columbia have been restrained and enjoined from erecting a fire engine house. It is admitted by stipulation filed in the Court below (Rec. 12) that respondents' predecessor in title was a party to the condemnation proceedings by which Rock Creek Park was secured and established, that a portion of the tract of land owned by her was taken and that the remaining portion of her tract which was not taken, but which was involved in the condemnation proceedings, embraced the property of these respondents. It appears from the Rock Creek Park Act (U. S. Code, Title 40, Sec. 83) that Congress recognized that land so located as was the land of these respondents, would be specially benefited by the location and improvement of Rock Creek Park and the perpetual dedication to use as a park, and provided that adjacent land so benefited should help to defray the costs of acquiring the park. It should be assumed that the Commissioners in charge of the condemnation and the Court under whose jurisdiction the Commission functioned in the institution and conduct of the condemnation proceedings, did their duty and that said land was assessed as required. Even though there had been no such provision for assessment of adjoin-

ing and adjacent properties in the Act authorizing the acquisition of Rock Creek Park, the general principle of law applicable to the acquisition of lands for public uses by condemnation proceedings in the exercise of eminent domain would have required that the award of damages to the respondents' predecessor in title take into consideration by way of deduction from what would otherwise be awarded, the benefits inuring to the portion of her tract which was not taken but which was involved in the said proceedings. In spite of this situation petitioners now contend that the benefits for which the land of the respondents was assessed, which benefits would be estimated as largely due to the perpetual dedication of the land taken to use as a park, can be seriously impaired and practically destroyed without just compensation.

ARGUMENT.

1. Easements are necessarily created in favor of land which is assessed for benefits from a particular public improvement.

> "If in the next instant they may by legislative authority be taken away and diverted to inconsistent uses, a system has been inaugurated which resembles more nearly *legalized robbery* than any other form of acquiring property." *Lahr* v. *Met. E. R. Co.*, 104 N. Y. 268, 291.

2. Respondents, as owners of home properties, adjacent to Rock Creek Park, have rights and easements which cannot be taken away without just compensation, since easements are entitled to same protection as fee title.

> "An easement is an interest in land for which the owner is entitled to compensation, as much so as if the land to which the easement is appurtenant were taken or injured." 20 *Corpus Juris* 655, citing *United States* v. *Welch*, 217 U. S. 333, and many other cases.

Petitioners contend that instead of diverting or changing the use of Rock Creek Park, Congress was enacting legislation to protect and safeguard the park against fire, in order that it could be used and enjoyed by the entire public. The legislation on its face shows that such a contention is groundless. The Act of Congress, 45 Stat. at L. 667, directed the Commissioners of the District of Columbia to sell property owned by the District at the corner of 16th and Webster Streets, N. W., which had been heretofore acquired for a fire engine house site and to pay the proceeds into the Treasury of the United States, and further directed them to erect the fire engine house at 16th and Colorado Avenue on a site located in Rock Creek Park. The Act then provided that "the balance of the appropriations carried in the Acts of May 10, 1926, and March 2, 1927, for an engine house in the vicinity of Sixteenth Street and Piney Branch

Road Northwest, is made available for the purpose aforesaid." The site at 16th and Webster Streets N. W., which Commissioners were directed to sell, was acquired by reason of the provisions of the Acts of May 10th, 1926, and March 2nd, 1927, as such a site was "in the vicinity of 16th Street and Piney Branch Road, N. W." Sixteenth and Webster Streets is eight city blocks South of the site at 16th and Colorado Avenue, and has no relation to or connection with Rock Creek Park. It was undoubtedly selected as a strategic location for the protection of the great apartment house area at 16th and Columbia Road, and it could not be used because of restrictive covenants running with the land. Rock Creek Park had existed for over thirty (30) years without fire protection by reason of the location of an engine house therein, and the necessity to protect and safeguard it against fire so that it could be used and enjoyed by the entire public is recognized for the first time in the brief of the petitioners. It is common knowledge, that fire protection is not deemed so urgent for the parks of the City as to require the location of engine houses therein, and none have been so located.

Certainly the consideration and assessment of benefits against the properties now owned by respondents would not contemplate a fire engine house at their front doors. Those properties were burdened with an assessment which was supposed to purchase an unobstructed view into the

park and the peace and quiet and beauty of such surroundings and outlook.

The obnoxious provision for the diversion of the aforesaid corner of Rock Creek Park for use as a site for a municipal fire engine house not only emanated from, but was actually drafted by, the Commissioners of the District of Columbia, and submitted by them with the express explanation that it was to provide a substitute location for the 16th and Webster Streets municipal fire engine site (pp. 104-5 printed hearings District of Columbia Appropriation Bill, 1929, sub-committee of Senate Appropriations Committee on H. R. 11133, March 7, 1928).

The petitioners claim that *Douglass vs. Montgomery*, 118 Alabama 508, and *Cincinnati vs. White*, 6 Pet. 438-8 L. Ed. 452, cited by the Court of Appeals in its opinion, are not in point because in those cases the "entire property" was attempted to be diverted. Whether all or part of Rock Creek Park is diverted to a use different from that to which it was dedicated, does not strengthen or weaken the application of the principle of those cases to the protection of the rights of respondents. It so happens in this case that the particular portion of Rock Creek Park which it is sought to divert to an objectionable use, was and is, the portion which means most to the respondents as a park, and it was the proximity of that portion to respondents' homes and the special damage resulting to them by its diversion that gave them

standing to maintain this suit. The entire area acquired under the Rock Creek Park Act was perpetually dedicated as a park, and a diversion of any part of that area to another use violates the letter and spirit of the Act, and "is a violation of good faith to the public, and to those who have acquired private property with a view to the enjoyment of the use thus publicly granted." *Cincinnati vs. White,* 6 Pet., *supra.*

3. The erection of a fire engine house at the point designated by Congress would be a violation of the letter and the spirit of the Zoning Law and Regulations.

The Zoning Law creates reciprocal rights and liabilities in the use which is limited or prescribed by the said Law or the regulations adopted thereunder. Congress is bound as well as all others to respect the Zoning Law until the same shall be repealed by Congress itself, and the location of a Fire Engine House so near to respondents' home properties (which were zoned for a "restricted" "residential" use only), as to conflict with or seriously affect such use would be plainly arbitrary and unreasonable, and therefore unlawful and unwarranted. This Court in *Euclid vs. Ambler Realty Co.,* 272 U. S. 365, stated that nothing arbitrary and unreasonable can be countenanced. Nothing more arbitrary and unreasonable could be imagined than the utter disregard of the Zon-

ing Regulations of the District of Columbia, which restrict the location of Fire Engine Houses to Commercial and industrial districts, shown by the location of an engine house at the front door of high-class residences in the very heart of a residential district. Its location there would destroy the compensating value and benefits inuring to respondents' properties as residences, and leave them burdened with a restriction which prevented their use and occupation for any other purpose. As aptly stated by the Court of Appeals of the District of Columbia, in *Quinn et al vs. Dougherty et al.*, 58 App. D. C. 340.

> "It may be assumed that the engine house in question could be located outside of this particular residential district and furnish the same public protection that will be afforded if it is established at the point in question. Inasmuch as under the Zoning Regulations no provision is made for the establishment of fire engine houses in residential districts, it must be assumed that the Zoning Commission, in exercising the power conferred on it by Congress, considered the protection adequate by their location in the other districts. It appears in this case that the engine house could have been established at a more strategic point two blocks distant from the present site where it would have been outside of a residential district and with little or no property damage to anyone."

The petitioners, in their brief, assert "The Zoning Regulations were made pursuant to the authority of Congress. Congress if it so desires can change or alter Zoning Laws or Regulations. Any subsequent enactment carrying out this policy, it is submitted, is a valid exercise of the inherent power of Congress to legislate for the District of Columbia." The answer to such a suggestion is that Congress made no attempt to change or alter Zoning Laws or Regulations. The most that can be said is that the Congress attempted to ignore the Zoning Laws and Regulations and the rights of these respondents thereunder, and its action in that respect was arbitrary, unreasonable, unlawful and unwarranted.

4. Authorities cited by petitioners on police power not in point.

The authorities cited by petitioners as sustaining the effectual setting aside or impairment of property rights by virtue of the exercise of the police power, are in nowise in point. *L'Hote* v. *New Orleans*, 177 U.S. 587, involving a restrictive ordinance dealing with a "Red Light District," which this Court held not to infringe property rights because "there is nothing in the ordinance to deny the ordinary right of the individual to restrain a private nuisance" (p. 600). *Hadacheck* v. *Sebastian*, 239 U. S. 394, involved an ordinance excluding the conduct of a brick business from a

residence section, just as *Reinman* v. *Little Rock*, 237 U. S. 171, involved a similar exclusion of a livery stable, both being businesses which this Court held could be dealt with as quasi-nuisances when in a residential section because of "the effect upon the health and comfort of the community" (239 U. S. at p. 411).

Surely, no one can seriously contend that respondents' wholly detached private homes located in the first and highest class residential use District of the Nation's Capital are subject to the destruction or impairment of any rights or easements appertaining to the same, by reason of any legislative power to limit or control quasi-nuisances when conducted on private property. The case at bar involves the reverse situation. Here we have an attempt by the public authorities to seriously impair residential property rights, including vested easements and zoning rights, by the injection of that which is plainly a quasi-nuisance in any residential section and which is positively unlawful in the particular residential section here concerned by reason of such vested easements and zoning rights. The real and undeniable situation is clearly stated by the Court of Appeals in *Quinn, et al.* v. *Dougherty, et al, supra.*

> "It appears in this case that the engine house could have been established at a more strategic point two blocks distant from the present site, where it would have been outside of a residential district and with little or no property damage to any one."

At p. 17 of their brief, petitioners assert that "There is no justification in the Record for the statement"; but such denial is not understood, since they necessarily well know the fact, of which the Court will also take judicial notice, that there is an abundance of first commercial land available for the purpose at and in the vicinity of 14th Street and Colorado Avenue, two blocks distant.

CONCLUSION.

It is respectfully submitted that the petition lacks merit, and that respondents ought not to be subjected to further expense in defending themselves, such as would be necessitated by granting of writ of certiorari. If the District Commissioners had any real confidence in their contention that they are excepted from the operation of zoning limitations and restrictions, they ought to have appealed from final decree of the Supreme Court of the District of Columbia entered December 17, 1928, in Equity Cause No. 48,769, *Wimsatt* v. *Dougherty et al.*, restraining the maintenance of a public place of incarceration in a residential zone, a similar arbitrary attempt by District Commissioners to invade and override the rights of citizens.

This Court will doubtless recall the extent to which Commissioners of the District of Columbia subjected another property owner to time, trouble

and great expense before she could obtain final relief from confiscation of her moneys collected as a special assessment on account of a public project which was not put through but abandoned (*District of Columbia* v. *Thompson*, 281 U. S. 25, affirming 58 App. D. C. 313). If the District Commissioners can by virtue of their official positions, raise every attempt on their part to disregard the rights of citizens, to the dignity of a public question entitled to special review by this Honorable Court, property owners can not hope for real relief from the Courts, because ultimate victory is necessarily so costly as to constitute financial defeat.

Respectfully submitted,

JOSEPH A. BURKART,
HENRY I. QUINN,
GEORGE E. SULLIVAN,
Attorneys for Respondents.

RESPONDENT'S BRIEF

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BRIEF FOR RESPONDENTS.

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339, and the second in 60 App. D. C. 325. The final judgment of the Court of Appeals was entered December 7, 1931 (Rec. 17).

QUESTIONS PRESENTED.

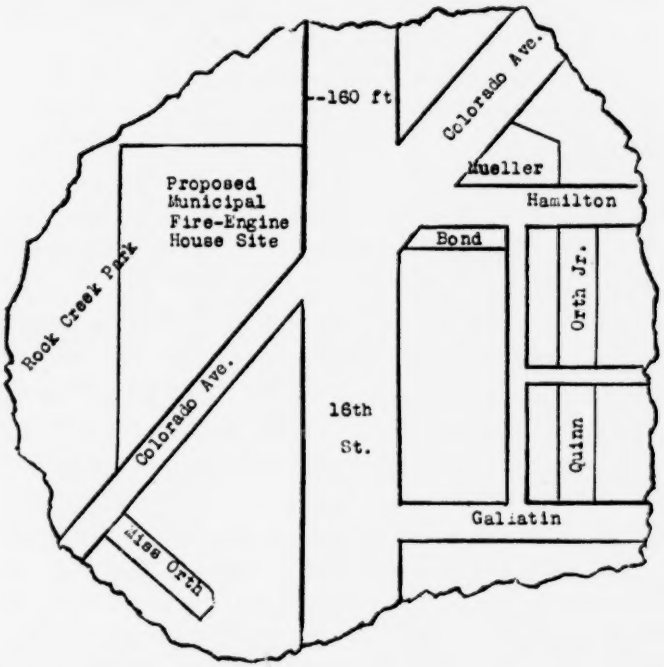
The questions presented are two-fold:

1. Whether the Congress, after perpetually dedicating and setting apart "as a public park or pleasure ground" land abutting, or in proximity to, privately owned land, which latter was treated as specially benefitted, and accordingly specially assessed, due to such proximity, can later impair or withdraw the easement so conferred, *with no judicial means or method provided for the owners seeking and obtaining just compensation for such impairment or withdrawal.*

2. Whether the Congress, after providing by Zoning Law and Regulations (which remain unrepealed) for the zoning of such privately owned land in proximity to such public park or pleasure ground as restricted to the highest class of residential use only, can cause the nearby public park or pleasure ground to be used for purposes rendering the future use of such privately owned land for the highest class of residential use impracticable or impossible, *without providing any judicial means or method for the owners seeking and obtaining just compensation.*

These questions are clearly set forth in the

first opinion of the Court of Appeals (58 App. D. C. 339). However, the following simple diagram may be helpful to the Court in grasping very precisely the questions involved.



It will be at once apparent to the Court that, instead of respondents' home properties being located "one city block or more" away (p. 21 petitioners' brief) from the portion of Rock Creek Park concerned, all of the homes of respondents are within several hundred feet, and three of

respondents, namely, Miss Orth, Mr. Bond, and Mr. Mueller, now enjoy an unobstructed view of that portion of Rock Creek Park, which view will be seriously obstructed by the proposed municipal fire-engine house. The aforesaid assertion on page 21 of petitioners' brief is also at variance with the admissions in their sworn answer that Miss Orth's home property is "less than one hundred feet away," that Mr. Bond's home property is "less than two hundred feet away," and that the home properties of the other respondents are also located short distances not exceeding about 300 feet as to the most distant (Rec. p. 9).

The final decree which the Court of Appeals of the District of Columbia affirmed, and which is now on review before this Honorable Court, restrained and enjoined the Commissioners of the District of Columbia from erecting a proposed municipal fire-engine house on the portion of Rock Creek Park shown on the above diagram (Rec. p. 13). Petitioners claim authority to proceed with such erection by reason of the following provision in Appropriation Act of Congress of May 21, 1928 (45 Stat. L. 667):

> "The Commissioners of the District of Columbia are hereby authorized and directed to sell the property at the corner of Sixteenth and Webster Streets, heretofore acquired for a fire engine house site at public or private sale at not less than the purchase price paid

> therefor by the District of Columbia and pay the proceeds thereof into the Treasury of the United States, to the credit of the District of Columbia; and the Commissioners are hereby authorized and directed to erect a fire engine house, with furniture and furnishings for a fire engine company, at the northwest corner of Sixteenth Street and Colorado Avenue, on property belonging to the United States, and there is hereby set aside for such purpose a plot of ground running north from the junction of Sixteenth Street and Colorado Avenue, as now publicly owned, one hundred (100) feet on Sixteenth Street, thence west at right angles to the street, one hundred and sixty feet (160), thence south at right angles to the line of Colorado Avenue. The balance of the appropriations carried in the Acts of May 10, 1926, and March 2, 1927, for an engine house in the vicinity of Sixteenth Street and Piney Branch Road Northwest, is made available for the purpose aforesaid."

Petitioners made no claim in either of the Courts below that this proposed municipal fire-engine house was sought to be so located for the protection of Rock Creek Park. On the contrary, petitioners produced Fire Chief Watson before the Subcommittee of the Senate Appropriation Committee on March 7, 1928, to give the following testimony:

> "The territory north of Park Road and extending from Park Road to the District line and from Rock Creek Park over to the

other side of the Soldiers' Home Park is practically now protected by two engine companies. An adequate response to each fire requires three engine companies and one truck company.

By installing this new engine house in the territory covered from Park Road to the District line, we will be able to retain in the northwest section, which provides the greatest life hazard in the District of Columbia from the fire standpoint, an engine company which now has to leave that territory open in order to cover territory from Park Road to the District line. We will be serving, by the installation of this company, two purposes. We will provide for the territory north of Park Road, extending to the District line, the three companies which should respond, demanded by the citizens as proper protection, and we will also give to this big apartment house section, the protection to which they are entitled. I do not believe that there is any question as to the necessity for the installation of this additional service" (p. 107, Hearings before Subcommittee of Senate Appropriations Committee on H. R. 11133).

It is admitted by stipulation filed herein (Rec. p. 12) that respondents' predecessor in title was a party to the condemnation proceedings by which Rock Creek Park was secured and established about 40 years ago under Rock Creek Park Act (26 Stat. L. 492—U. S. Code, Title 40, Sec. 83), and further that a portion of the tract owned by respondents' said predecessor was taken, and the

remaining portion of the tract not taken but involved in the condemnation proceedings embraced the property of these respondents. The said Rock Creek Park Act contained the following express provision:

> "That the commission having ascertained the cost of the land, including expenses, shall assess such proportion of such cost and expenses upon the lands, lots and blocks situated in the District of Columbia specially benefited by reason of the location and improvement of said park, as nearly as may be, in proportion to the benefits resulting to such real estate" (Sec. 6).

Under settled principles, the award to respondents' said predecessor in title for the part of the tract actually taken was necessarily reduced by the amount of benefits inuring to the portion of her tract which was not taken but which was involved in said proceedings.

Under the Zoning Act for the District of Columbia, of March 1, 1920 (41 Stat. L. 500), and the Regulations promulgated thereunder, the area in the vicinity of Rock Creek Park shown in part by the above diagram became part of the first and highest grade or class of residentially zoned properties, known as "'A' Restricted Area District" (Section XVa D. C. Zoning Regulations)—

> "for use only as a wholly detached single-family or passenger station" (Rec. p. 3),

no provision being made for incinerators, places of incarceration, engine houses, or other obnoxious establishments in residentially zoned areas. There is, however, nothing in the Regulations purporting in anywise to prohibit fire-engine houses in First Commercial, Second Commercial, or Industrial zoned areas.

ARGUMENT.

1. Easements are necessarily created in favor of land which is assessed for benefits from a particular public improvement.

"If in the next instant they may by legislative authority be taken away and diverted to inconsistent uses, a system has been inaugurated which resembles more nearly *legalized robbery* than any other form of acquiring property." *Lahr* v. *Met. E. R. Co.*, 104 N. Y. 268, 291.

2. Respondents, as owners of home properties, adjacent to Rock Creek Park, have rights and easements which cannot be taken away without just compensation, since easements are entitled to same protection as fee title.

"An easement is an interest in land for which the owner is entitled to compensation, as much so as if the land to which the easement is appurtenant were taken or injured." 20 *Corpus Juris* 655, citing *United States* v. *Welch*, 217 U. S. 333, and many other cases.

Petitioners contend here, for the first time, that instead of diverting or changing the use of Rock Creek Park, Congress was enacting legislation to protect and safeguard the park against fire, in order that it could be used and enjoyed by the entire public. The legislation on its face shows that such a contention is groundless. The Act of Congress, 45 Stat. at L. 667, directed the Commissioners of the District of Columbia to sell property owned by the District at the corner of 16th and Webster Streets, N. W., which had been heretofore acquired for a fire engine house site and to pay the proceeds into the Treasury of the United States, and further directed them to erect the fire engine house at 16th and Colorado Avenue on a site located in Rock Creek Park. The Act then provided that "the balance of the appropriations carried in the Acts of May 10, 1926, and March 2, 1927, for an engine house in the vicinity of Sixteenth Street and Piney Branch Road Northwest, is made available for the purpose aforesaid." The site at 16th and Webster Streets N. W., which Commissioners were directed to sell, was acquired by reason of the provisions of the Acts of May 10th, 1926, and March 2nd, 1927, as such a site was "in the vicinity of 16th Street and Piney Branch Road, N. W." Sixteenth and Webster Streets is eight city blocks South of the site at 16th and Colorado Avenue, and has no relation to or connection with Rock Creek Park. It was undoubtedly selected as a strategic

location for the protection of the great apartment house area at 16th and Columbia Road, and it could not be used because of restrictive covenants running with the land.

Certainly the consideration and assessment of benefits against the properties now owned by respondents would not contemplate a fire engine house at their front doors. Those properties were burdened with an assessment which was supposed to purchase an unobstructed view into the park and the peace and quiet and beauty of such surroundings and outlook.

The obnoxious provision for the diversion of the aforesaid corner of Rock Creek Park for use as a site for a municipal fire engine house not only emanated from, but was actually drafted by, the Commissioners of the District of Columbia, and submitted by them with the express explanation that it was to provide a substitute location for the 16th and Webster Streets municipal fire engine site (pp. 104-5 printed hearings District of Columbia Appropriation Bill, 1929, sub-committee of Senate Appropriations Committee on H. R. 11133, March 7, 1928).

The contention by petitioners, if sanctioned, would be productive of the gravest consequences. If it be no diversion of this public park or pleasure ground or impairment or withdrawal of the benefits to adjacent property owners, to erect a Municipal Fire-Engine House at their front doors, because the fire-engine might on

occasions be called into Rock Creek Park it could with equal propriety be claimed that a Municipal Incinerating Plant could be also located adjacent to the Fire-Engine House to destroy trash and garbage of the Nation's Capital along with leaves and trash from Rock Creek Park, or that a Municipal Jail or House of Incarceration could be also so located because such an institution might also be used to house persons committing depredations in Rock Creek Park. In fact, the attitude of the District Commissioners is well known to be so far-reaching, because in the Fall of 1928 they actually attempted to instal a public place of incarceration in one of the best residentially zoned sections of the District, in disregard of the Zoning Law and Regulations, but were halted in their attempt by decree of the Supreme Court of the District of Columbia in Equity Cause No. 48,769, Wimsatt v. Dougherty et al., December 17, 1928.

The petitioners claim that *Douglass vs. Montgomery*, 118 Alabama 508, and *Cincinnati vs.* White, 6 Pet. 438-8 L. Ed. 452, cited by the Court of Appeals in its opinion, are not in point because in those cases the "entire property" was attempted to be diverted. Whether all or part of Rock Creek Park is diverted to a use different from that to which it was dedicated, does not strengthen or weaken the application of the principle of those cases to the protection of the rights of respondents. It so happens in this case that the particu-

lar portion of Rock Creek Park which it is sought to divert to an objectionable use, was and is, the portion which means most to the respondents as a park, and it was the proximity of that portion to respondents' homes and the special damage resulting to them by its diversion that gave them standing to maintain this suit. The entire area acquired under the Rock Creek Park Act was perpetually dedicated as a park, and a diversion of any part of that area to another use violates the letter and spirit of the Act, and "is a violation of good faith to the public, and to those who have acquired private property with a view to the enjoyment of the use thus publicly granted." *Cincinnati vs. White*, 6 Pet., *supra.*

3. The erection of a fire engine house at the point designated by Congress would be a violation of the letter and the spirit of the Zoning Law and Regulations.

The Zoning Law creates reciprocal rights and liabilities in the use which is limited or prescribed by the said Law or the regulations adopted thereunder. Congress is bound as well as all others to respect the Zoning Law until the same shall be repealed by Congress itself, and the location of a Fire Engine House so near to respondents' home properties (which were zoned for "A-Restricted" "residential" use only), as to conflict with or seriously affect such use would be plainly arbitrary

and unreasonable, and therefore unlawful and unwarranted. This Court in *Euclid vs. Ambler Realty Co.*, 272 U. S. 365, stated that nothing arbitrary and unreasonable can be countenanced. Nothing more arbitrary and unreasonable could be imagined than the utter disregard of the Zoning Regulations of the District of Columbia, which restrict the location of Fire Engine Houses to Commercial and Industrial districts, shown by the location of an engine house at the front door of high-class residences in the very heart of a residential district. Its location there would destroy the compensating value and benefits inuring to respondents' properties as residences, and leave them burdened with a restriction which prevented their use and occupation for any other purpose. As aptly stated by the Court of Appeals of the District of Columbia, in *Quinn et al vs. Dougherty et al.*, 58 App. D. C. 339:

> "Inasmuch as under the Zoning Regulations no provision is made for the establishment of fire engine houses in residential districts, it must be assumed that the Zoning Commission, in exercising the power conferred on it by Congress, considered the protection adequate by their location in the other districts. It appears in this case that the engine house could have been established at a more strategic point two blocks distant from the present site where it would have been outside of a residential district and with little or no property damage to anyone."

The petitioners, in their brief (p. 20) assert "The Zoning Regulations were made pursuant to the authority of Congress. Congress if it so desires can change or alter Zoning Laws or Regulations. Any subsequent enactment carrying out this policy, it is submitted, is a valid exercise of the inherent power of Congress to legislate for the District of Columbia." The answer to such a suggestion is that Congress made no attempt to change or alter Zoning Laws or Regulations. The most that can be said is that the Congress attempted to ignore the Zoning Laws and Regulations and the rights of these respondents thereunder, and its action in that respect was arbitrary, unreasonable, unlawful and unwarranted.

Any holding that a zoning law or regulation should, or can, be so framed or construed as to restrict private property within a special area against unsuitable or obnoxious uses by private individuals only, but that the municipal authorities may do so with impunity and without compensating those affected, while the private individuals continue to be so restricted and their property rendered thereby unsuitable and unsalable for the zoned uses, is so obviously contrary to the guarantees contained in the Fifth Amendment to the Constitution of the United States, that a discussion of the case of Cincinnati v. Wegehoft, 119 Ohio 136, (cited by petitioners), is not believed to be necessary.

4. Authorities cited by petitioners on police power not in point.

The authorities cited by petitioners as sustaining the effectual setting aside or impairment of property rights by virtue of the exercise of the police power, are in nowise in point. *L'Hote* v. *New Orleans*, 177 U. S. 587, involved a restrictive ordinance dealing with a "Red Light District," which this Court held not to infringe property rights because "there is nothing in the ordinance to deny the ordinary right of the individual to restrain a private nuisance" (p. 600). *Hadacheck* v. *Sebastian*, 239 U. S. 394, involved an ordinance excluding the conduct of a brick business from a residence section, just as *Reinman* v. *Little Rock*, 237 U. S. 171, involved a similar exclusion of a livery stable, both being businesses which this Court held could be dealt with as quasi-nuisances when in a residential section because of "the effect upon the health and comfort of the community" (239 U. S. at p. 411).

Surely, no one can seriously contend that respondents' wholly detached private homes located in the first and highest class residential use District of the Nation's Capital are subject to the destruction or impairment of any rights or easements appertaining to the same, by reason of any legislative power to limit or control quasi-nuisances when conducted on private property. The case at bar involves the reverse situation. Here

we have an attempt by the public authorities to seriously impair residential property rights, including vested easements and zoning rights, by the injection of that which is plainly a quasi-nuisance in any residential section and which is positively unlawful in the particular residential section here concerned by reason of such vested easements and zoning rights.

5. Petitioners' untenable contention that respondents' remedy, if any, is at law.

Petitioners' final contention that respondents should pursue their remedy at law, if any, requires only brief notice. The real gravamen of respondents' complaint is that their rights are sought to be invaded and impaired or destroyed without any judicial means or method being provided for respondents to seek and obtain just compensation. There is no tribunal to which respondents can go, except to a Court of Equity, to give injunctive relief under the circumstances. The recent decision of this Honorable Court in *Hurley, Secretary of War*, v. *Kincaid*, 285 U. S. 95, cited by petitioners as an authority in support of their contention, is directly opposed thereto, the ruling there being that, where a judicial means or method *is* provided for the owners seeking and obtaining compensation, they will be relegated to such remedy.

CONCLUSION.

It is submitted that the decree below is right, and should be affirmed.

Respectfully submitted,

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